

AMENDED IN SENATE FEBRUARY 14, 2008

**SENATE BILL**

**No. 1054**

---

**Introduced by Senator Machado  
(Principal coauthor: Senator Perata)**

January 7, 2008

---

An act to add Sections 10087~~and 10134~~, *10134*, and *10177.6* to the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 1054, as amended, Machado. Real estate: brokers and salespersons.

Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and real estate salespersons by the Real Estate Commissioner and provides that a willful violation of that law is a crime. Existing law *authorizes the commissioner to direct a person to desist and refrain from activities that are in violation of that law, as specified, and also* authorizes the commissioner to suspend or revoke the license of a real estate licensee who performs specified acts.

This bill would also authorize the commissioner to ~~censure~~, suspend, or bar a person from a position of employment, management, or control *for a specified period* if the commissioner finds that the ~~censure~~, suspension, or bar is in the public interest and that the person has committed or caused a violation of the Real Estate Law or a rule or order of the commissioner, as specified. The bill would additionally authorize the commissioner to impose that discipline if the person has been convicted of or pleaded nolo contendere to a crime or been held liable in a civil action by final judgment, or any administrative judgment by any public agency, if the crime or civil or administrative judgment involves an offense involving dishonesty, fraud, or deceit, or any other

offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business.

The bill would also prohibit ~~a real estate salesperson or a real estate broker licensee~~ who provides an opinion of the value of a *residential real property* to a lienholder of the property from performing specified acts with respect to that property within 12 months of providing the opinion *if the lienholder requested the opinion in connection with a specified sale and subsequently acquired the property through foreclosure or through a deed in lieu of foreclosure.* ~~By~~

*Existing law requires listing and selling agents, as defined, to provide sellers and buyers in a residential real property transaction with a disclosure form, as prescribed, containing general information on real estate agency relationships. Existing law also requires the listing or selling agent to disclose to the buyer and seller whether he or she is acting as the buyer's agent exclusively, the seller's agent exclusively, or as a dual agent representing both the buyer and the seller.*

*This bill would require a person or entity that arranges financing in connection with a sale, lease, or exchange of real property and acts as an agent with respect to that property to make a written disclosure of those roles, within 24 hours, to all parties to the sale, lease, or exchange and any related loan transaction.*

By imposing additional requirements under the Real Estate Law, the willful violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 10087 is added to the Business and
- 2 Professions Code, to read:
- 3 10087. (a) In addition to acting pursuant to the authority
- 4 provided under ~~Section~~ *Sections 10086, 10176, and 10177*, the
- 5 commissioner may, after appropriate notice and opportunity for a
- 6 hearing, by order, ~~censure or suspend for a period not exceeding~~

1 ~~36 months, or bar from any~~ *suspend, or bar from any* position of  
2 employment, management, or control, ~~any for a period not~~  
3 *exceeding 36 months, a real estate salesperson or real estate broker,*  
4 ~~or any other person an unlicensed person issued an order under~~  
5 *Section 10086, if the commissioner finds either of the following:*

6 (1) That the ~~censure, suspension,~~ *suspension* or bar is in the  
7 public interest and that the person has committed or caused a  
8 violation of this division or rule or order of the commissioner,  
9 which violation was either known or should have been known by  
10 the person committing or causing it or has caused material damage  
11 to the public.

12 (2) That the person has been convicted of or pleaded nolo  
13 contendere to any crime, or has been held liable in any civil action  
14 by final judgment, or any administrative judgment by any public  
15 agency, if that crime or civil or administrative judgment involved  
16 any offense involving dishonesty, fraud, or deceit, or any other  
17 offense reasonably related to the qualifications, functions, or duties  
18 of a person engaged in the real estate business in accordance with  
19 the provisions of this division.

20 (b) Within 15 days from the date of a notice of intention to issue  
21 an order pursuant to subdivision (a), the person may request a  
22 hearing under the Administrative Procedure Act (Chapter 4.5  
23 (commencing with Section 11400) of Division 3 of Title 2 of the  
24 Government Code). If no hearing is requested within 15 days after  
25 the mailing or service of that notice and none is ordered by the  
26 commissioner, the failure to request a hearing shall constitute a  
27 waiver of the right to a hearing.

28 (c) Upon receipt of a notice of intention to issue an order  
29 pursuant to this section, the person who is the subject of the  
30 proposed order is immediately prohibited from engaging in any  
31 business activity involving real estate that is subject to regulation  
32 under this division.

33 (d) Persons suspended or barred under this section are prohibited  
34 from participating in any business activity of a real estate  
35 salesperson or a real estate broker and from engaging in any  
36 business activity on the premises where a real estate salesperson  
37 or real estate broker is conducting business. Persons suspended or  
38 barred under this section are also prohibited from participating in  
39 any business activity of a finance lender, residential mortgage

1 lender, bank, credit union, escrow company, ~~or title company, or~~  
2 ~~underwritten title company.~~

3 SEC. 2. Section 10134 is added to the Business and Professions  
4 Code, to read:

5 ~~10134. A real estate broker or salesperson who provides an~~  
6 ~~opinion of the value of a property to a lienholder of the property,~~  
7 ~~whether or not for or in expectation of compensation, shall not~~  
8 ~~perform any act listed in Section 10131 or 10131.1 with respect~~  
9 ~~to that property within 12 months of providing the opinion. This~~

10 *10134. (a) A licensee who provides an opinion of the value of*  
11 *a residential real property to a lienholder of the property, whether*  
12 *or not for or in expectation of compensation, shall not perform*  
13 *any act listed in subdivision (a) or (b) of Section 10131 with respect*  
14 *to that property within 12 months of providing the opinion if both*  
15 *of the following conditions are met:*

16 *(1) The opinion is requested by the lienholder in connection*  
17 *with a proposed debt forgiveness sale.*

18 *(2) The lienholder subsequently acquires the property through*  
19 *foreclosure or through a deed in lieu of foreclosure.*

20 *(b) This section is not intended to prohibit a real estate broker*  
21 *or salesperson licensee from offering an opinion of the value of*  
22 *residential real property to the a homeowner or a prospective*  
23 *homeowner.*

24 SEC. 3. Section 10177.6 is added to the Business and  
25 Professions Code, to read:

26 *10177.6. When an agent undertakes to arrange financing in*  
27 *connection with a sale, lease, or exchange of real property, or*  
28 *when a person or entity arranging financing in connection with*  
29 *the sale, lease, or exchange of real property undertakes to act as*  
30 *an agent with respect to that property, that agent, person, or entity*  
31 *shall, within 24 hours, make a written disclosure of those roles to*  
32 *all parties to the sale, lease, or exchange, and any related loan*  
33 *transaction. For purposes of this section, “agent” has the same*  
34 *meaning as defined in subdivision (a) of Section 2079.13 of the*  
35 *Civil Code.*

36 ~~SEC. 3.~~

37 SEC. 4. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

1   infraction, eliminates a crime or infraction, or changes the penalty  
2   for a crime or infraction, within the meaning of Section 17556 of  
3   the Government Code, or changes the definition of a crime within  
4   the meaning of Section 6 of Article XIII B of the California  
5   Constitution.

O